

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Raimundo P. Silva |) | File Number: EB-04-SF-150 |
| |) | |
| Licensee of Amateur Station KD6SXG |) | NAL/Acct. No. 200532960001 |
| Brentwood, California |) | FRN 0009808163 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 26, 2004

By the District Director, San Francisco Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Raimundo P. Silva ("Silva"), licensee of Amateur Station KD6SXG, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating on the frequency of 297.530 MHz without Commission authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,² that Silva is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. On April 12, 2004, the Commission's San Francisco Field Office received a complaint that an authorized United States government user was receiving harmful interference that obstructed and interfered with satellite communications from an unauthorized station operating on 297.530 MHz. On April 19, 2004, San Francisco Office field agents, using electronic direction finding techniques, detected transmissions on 297.530 MHz. The agents took bearings of the radio signal which indicated the source of the signal to be a station in the vicinity of the residence at 4691 Christenson Street, Brentwood, California. As the agents approached the Christenson Street address the bearings changed direction indicating that the radio transmitting device in use was mobile and was moving away from the area. The field agents continued to take bearings and followed the radio source from Brentwood to south of Antioch, California. Later that day, the agents detected the signal again and followed the bearings indicated by the direction finding equipment to the front of the residence at 4691 Christenson Street in Brentwood, California. There they saw Raimundo Pereira Silva sitting in a white pickup truck registered with the California Department of Motor Vehicles in his name at that address.³

3. On April 20, 2004, the field agents again detected transmissions on 297.530 MHz, with

¹47 U.S.C. § 301.

²47 U.S.C. § 503(b).

³California DMV records and drivers license photographs enabled the field agents to identify Silva as the man in the white pickup truck.

bearings again indicating the source of the radio signal as the Christenson Street residence. Silva was sitting in the white pickup truck holding a radio transmitter microphone to his face. The bearings indicated the source of the radio transmissions was the white pickup truck.

4. On April 22, 2004, the field agents detected transmissions on 297.530 MHz and took bearings that indicated that the source of the signal was from the residence at 4691 Christenson Street, Brentwood, California.⁴ Later that day, the field agents again detected transmissions from the residence. The field agents detected Silva's transmissions emanating from the residence over six miles to the south and east of the Christenson Street address. The field agents also detected several transmissions made by Silva on 297.530 MHz on May 27, 2004, and May 28, 2004, while Silva was driving the white pickup truck. On May 27, 2004, the field agents detected transmissions by Silva over five miles from where he was transmitting. The field agents confirmed with the complainant that the transmissions on May 27, 2004 caused harmful interference to the authorized users. The field agents continued to monitor Silva's radio transmissions, detecting operations by Silva on 297.530 MHz on numerous occasions from September 22, 2004, to October 21, 2004. The authorized user also continued to report harmful interference during this interval.

5. According to Commission records, Raimundo P. Silva, 4691 Christenson Street, Brentwood, California, was issued a General Class, amateur radio operator license with call sign KD6SXG, on February 23, 1993.⁵ The license was renewed on October 31, 2003, and will expire on October 31, 2013. Pursuant to Section 97.103(a) of the Rules, licensed amateur radio operators are responsible for the proper operation of their stations in accordance with the Commission's Rules.⁶ Licensed amateur operators are authorized to operate on the frequencies listed Section 97.301 of the Rules, as designated by their operator class and license.⁷ In order to use designated frequencies in the amateur bands, amateur operators must follow the frequency sharing requirements in Section 97.301 of the Rules and the United States Table of Frequency Allocations ("Table"), found in Sections 2.105 and 2.106⁸ of the Rules.⁹ The Table lists the use of the frequency band 267 – 322 MHz as Federal Government only.¹⁰ In the band 255 – 328.6 MHz, the fixed and mobile services are limited to the military services.¹¹ The use of the band 235 - 322 MHz is allocated on a primary basis to the mobile-satellite service, limited to military operations.¹² A review of Commission records reveals no record of a license for the use of 297.530 MHz issued to any individual or entity in the vicinity of Brentwood, California.

⁴At this time, the white Dodge pickup truck was present, but no one was in the vehicle.

⁵In accordance with Part 97 of the Commission's Rules, operation of an amateur station requires an amateur operator license grant from the FCC. Before receiving a license grant, an applicant must pass an examination which contains one telegraphy (Morse Code) element and three written elements which establish the applicant's level of operational and technical ability in performing properly the duties of an amateur service licensee. The class for which each examinee is qualified is determined by the degree of skill and knowledge in operating a station that the examinee demonstrates at the examination. There are six classes of amateur operator licenses. The higher the license class, the more expertise the licensee must demonstrate and the greater the frequency privileges the amateur operator is authorized. In ascending order, the classes of amateur operator license grants are: Novice, Technician, Technician Plus, General, Advanced and Amateur Extra. *See 1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission's Amateur Service Rules*, 13 FCC Rcd 15798 (1998).

⁶47 C.F.R. § 97.103(a).

⁷47 C.F.R. § 97.301.

⁸47 C.F.R. §§ 2.105, 2.106.

⁹*See* 47 C.F.R. § 97.303.

¹⁰47 C.F.R. § 2.106.

¹¹47 C.F.R. § 2.106, Federal Government Footnote G27.

¹²47 C.F.R. § 2.106, Federal Government Footnote G100.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹³ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁴

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signal by radio except under and in accordance with this Act and with a license granted under the provisions of this Act.¹⁵ On April 19, 2004, April 20, 2004, April 22, 2004, May 27, 2004 and May 28, 2004, Silva, without authorization, operated a radio transmitting apparatus¹⁶ on the frequency 297.530 MHz, a frequency reserved for United States government use. On numerous additional occasions from September 22, 2004, to October 21, 2004, Silva, without authorization, operated a radio transmitting apparatus on a frequency reserved for United States government use. Silva's unauthorized radio operations in April, May, September, and October, 2004, caused harmful interference that obstructed and interfered with satellite communications of authorized government users. As a licensed amateur operator, Silva is required to know which frequencies he is permitted to operate on. The frequency 297.530 MHz is not one of those frequencies. However, Silva continually operated on the frequency 297.530 MHz without authorization. Therefore, Silva's violation was willful. His violation occurred on more than one day, therefore, it was repeated.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000.¹⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁸ Based on the criteria in Section 503(b)(2)(D) of the Act, and the upward adjustment criteria in the Forfeiture Policy Statement, we find that an upward adjustment of the base forfeiture amount of \$10,000 is warranted.¹⁹ Silva's apparent willful and repeated unlicensed and

¹³Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹⁵47 U.S.C. § 301.

¹⁶The field agents detected the signal from Silva's transmission over five miles from the location of his radio apparatus. This would indicate that the radio transmitting device used by Silva is not compliant with Section 15.209(a) of the Rules. 47 C.F.R. § 15.209(a). Part 15 devices, which are non-licensed, low power devices, typically have a range of less than one mile.

¹⁷12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁸47 U.S.C. § 503(b)(2)(D).

¹⁹47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 – 01.

unauthorized radio operation in a restricted band is egregious. According to the evidence, Silva operates radio transmission equipment on a frequency reserved exclusively for the United States government. Silva's unauthorized radio operations cause harmful interference to the authorized users. Silva's radio operations on the restricted frequency have been ongoing for many months and continued into October, 2004. Considering the entire record and applying the factors listed above, we conclude a forfeiture in the amount of \$20,000 is appropriate.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Raimundo P. Silva is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000) for violations of Section 301 of the Act.²⁰

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Raimundo P. Silva shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. The response, if any, must be mailed to San Francisco District Office, Western Region, Enforcement Bureau, Federal Communications Commission, 5653 Stoneridge Drive, Suite 105, Pleasanton, California, 94588, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²¹

²⁰47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

²¹See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, regular mail, and hand-delivered to Raimundo P. Silva, 4691 Christenson Street, Brentwood, California, 94513.

FEDERAL COMMUNICATIONS COMMISSION

Thomas N. VanStavern
District Director
San Francisco Office
Western Region